THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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+W.P.NO.2500 OF 1993

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% 18.08.2005

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KANCHERLA KRISHNA RAO AND SEVEN OTHERS.

PETITIONERS And

$ (1) GOVERNMENT OF ANDHRA PRADESH REP. BY ITS SECRETARY FOOD AND AGRICULTURE (MARKETING) DEPARTMENT, SECRETARIAT, HYDERABAD

(2) AGRICULTURAL MARKET COMMITTEE, PEDDAPURA, E.G. DISTRICT. REP. BY ITS SUPERVISOR.

RESPONDENTS

! Counsel for the petitioners Sri K.Srininivasa Murthy

^ Counsel for the respondents: Sri K.Madhava Reddy, Standing Counsel for A.M.C.S.

<Gist

>Head Note:

?Cases referred:

1. 2000(4) ALD 253 (DB)

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O R D E R

This writ petition is filed for a writ of mandamus restraining the respondents from enforcing the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short 'the Act').

2. The case of the petitioners as stated in the affidavit filed in support of the writ petition is that the petitioners are having starch mills for the manufacture of starch and the material used for the said manufacture is Tapioca, which is treated as vegetable under the notification issued by the Government – 1st respondent under the Act. Petitioners approached various growers of Tapioca and purchased from them during the harvesting season. The further case of the petitioners is that before the scheme of the Act is made applicable, declaration must be made for the notified areas under Section 3 of the Act. Initially, the Government must publish a draft notification declaring their intention to regulate purchase and sale of agricultural produce in the area, as notified. Particular time should be given for objections and finally notification has to be issued declaring the areas specified in the draft notification. Government has accordingly issued the notification covering taluks, as separate notified areas which is as follows:

Name of the Notified area

Agricultural Market Committee Notified area

1.Ramachandrapuram Ramachandrapuram Taluk

2. Pithapuram Pithapuram Taluk

3. Kakinada Kakinada Taluk

4. Peddapuram Peddapuram Taluk and

Prathipadu taluk

As per the notification each one of them has been constituted as a separate notified area. Section 4 of the Act authorizes the Government to constitute by notification a market committee for every notified area which has been given the power to enforce the provisions of the Act apart from establishing markets in the notified area and it is also incumbent on the committee to declare by notification the limits of every market established by the committee. It is not merely sufficient to have a market by virtue of G.O.Ms.No.719 dated 27.12.1979 issued by the State Government, facilities have to be provided in the market. The aforesaid G.O. was considered by this court in the case of Agricultural Market Committee, Anantapur vs. Kolluri Subbi Reddy and others (AIR 1984 A.P. 391). The contention of the petitioners is that it is incumbent on the part of the Market Committee to not only locate market, but facilities which are required, should also be provided. It is also stated that the Market Committee cannot insist the petitioners or any others who are carrying on business to shift to the so called market and it may be noticed that when the market committee is not rendering any service in the market, no levy can be made and the Committee is under obligation to provide those facilities before requiring the traders to shift to the market and take out a licence and pay fee, which is the scheme of the enactment. Whenever such facilities are not being provided, the market, Committee is not entitled to insist for payment of market fee and for obtaining licence. It is stated that the petitioners were asked to take out licences from the Agricultural Market Committee, Peddapuram, when there is no market at all. Therefore, in the absence of any market, the question of petitioners paying licence fee does not arise. With these averments, the petitioners sought for exemption from payment of market fee and obtaining licence.

3. A detailed counter has been filed by the respondent – Market Committee, denying the allegations of the petitioners. It is stated that the object and purpose of the Act is to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of the markets in connection therewith. The intention of the Legislature is to eliminate the middleman in notified agricultural produce and to protect the producers of such agricultural produce from exploitation and to ensure them a fair price for their produce. It is stated that the Government issued G.O.Ms.No.674, Food and Agricultural (Agri IV) Dept. dated 7.7.1976 exercising the

powers conferred by sub Section (4) (c) read with sub-sections (1) and (2) of Section 3 of the Act and issued notification declaring their intention to separate the areas comprising within the taluks of Ramachandrapuram, Pithapuram, Kakinada, Peddapuram and Prathipadu from the notified areas of Agricultural Market Committee, Rajahmundry and Tuni and to declare them as separate areas for constitution of Agricultural Market Committees. It is stated that the notification was published in the A.P.Gazettee dated 14.7.1977 declaring the establishment of the markets under Section 4(3) (a) and (b) and then market areas under Section 4(3)(3) (c) of (1) Peddapuram (2) Kirlampudi (3) Yeleswaram. By virtue of Government Order dated 22.9.1976, a notification was issued under clauses (a) and (b) of sub-section (3) of Section 4 of the Act, directing the Agricultural Market Committees to establish markets. By virtue of this notification, the markets have been established at (1) Peddapuram (2) Kirlampudi and (3) Yeleswaram by Peddapuram Agricultural Market Committee. Further by G.O.Ms.No.597 dated 17.8.1977, by exercising the power conferred by sub-section (4) of Section 4 of the Act, market areas were declared and market areas of Peddapuram, Yeleswaram and Kirloampudi, were notified. It is the notification issued under Section 4(4) of the Act, specifying market areas and notifying agricultural produce. The market area of Peddapuram is entire area within the Municipal limits of Peddapuram town. It is stated that when once the declaration is made as required by law fixing the boundaries of the market area, the petitioners are bound to obtain a licence and pay the market fee under the provisions of the Act. It is also stated that the Peddapuram Market Committee is constituted with its Head quarters at Kirlampudi. It is stated that A.P.Market Committee of Peddapuram is having its Head office at Kirlampudi where a market yard is established and the same was under Section 7(6) of the Act. It is stated that the market yard is located in an area of Acs.13.00, which was purchased for Rs.4,00,000/- and that various facilities were provided. The case of the respondents is that when once the notification is given under the provisions of the Act, notifying the market area, the petitioners are bound to pay the market fee and obtain licence and they cannot ask for any exemption.

4. The learned counsel appearing for the petitioners raised two contentions viz., (1) that petitioners mills are located at Peddapuram, whereas the market yard is situated at Kirlampudi, which is about 18 kms. away from the place of the mills and, therefore, it is not obligatory on the part of the petitioners to obtain licences and (2) since the

Market Committee has not provided any facilities in the market yard, petitioners cannot be insisted upon for payment of the market fee. On the other hand the contention of the standing counsel is that since there is no dispute with regard to issuance of draft and final notifications and also since the Tapioca which the petitioners are using for manufacture of starch is a notified commodity under schedule II of Section 3 of the Act, the petitioners are bound to pay the market fee and obtain licences. He further contended that when once the mills of the petitioners are located within the notified area of the market yard, the provisions of the Act would apply and the relief sought for by the petitioners cannot be granted.

5. It is not in dispute that the Government have issued G.O.Ms.No.597 Food and Agricultural (Agri II) dated 17.8.1977 by exercising the powers conferred under Section 4 of the Act and declared the market areas covering various taluqs and that the Peddapuram Market Committee is constituted with its head quarters at Kirlampudi. It is also not in dispute that the A.P. Market Committee of Peddapuram is having its head office at Kirlampudi, where a market yard is established and the same is as per Section 7(6) of the Act and as stated in the counter, the market yard is located. It is also not in dispute that the petitioners factory falls within the municipal limits of Peddapuram, town. The contention of the petitioners is that because the petitioners' mills were at a distance of 18 kms. from the market yard, therefore, it is not necessary to obtain the licence for the purpose of conducting business. On the other hand the contention of the standing counsel is that once the petitioners mills are located within the jurisdiction of the notified area, the distance of the petitioners mills from the market yard is not the criteria and it is obligatory on the part of the petitioners to obtain licnece and the Market Committee has got authority to insist for payment of market fees and for obtaining licence.

6. For the purpose of considering the issue, it is necessary to look into the provisions of the Act. Section 2 sub section (i) deals with 'agricultural produce'; sub section (iv) deals with 'growers'; sub section (v) defines 'livestock'; sub section (ix) defines 'notification'; sub section (x) deals with 'notified agricultural produce, livestock or produce of livestocks'; sub section (xi) defines 'notified area'; sub section (xii) defines 'notified market area'; sub section (xv) defines 'products of livestock'; Section 3 deals with 'declaration of notified area'; Section 4 deals with 'constitution of a market committee and declaration of notified market area'; Section 7 deals with

'trading etc., notified agricultural produce, livestock and products of livestock in the notified area' and; Section 12 deals with 'levy of fees by the market committee'. By virtue of G.O.Ms.No.1990, Food and Agricultural (Legislation), 17th October, 1969, the Andhra Pradesh (Agricultural Produce & Livestock) Market Rules, 1969 (for short 'the Rules') were framed. Rule 2 sub rule (xvi) deals with 'notified commodity'; sub rule (xvii) deals with 'office of the market committee'; Rule 3 defines 'manner of publication of notification'; Rule 26 deals with 'control of market'; Rule 27 deals with 'powers and duties of market committee'; Rule 48 deals with 'application for grant of renewal of licence under sub-section (1) of Section 7 and fees chargeable therefor' and; Rule 50 deals with 'grant or renewal of licences'.

7. Provisions of the Act and the Rules made thereunder are unambiguous with regard to their applications to the market yards and the regulation and collection of market fees and obtaining licences etc.

8. In view of the admitted position that since necessary notifications have been issued and the market yards are notified as per the provisions of the Act and the Rules made thereunder, the relief sought for by the petitioners to restrain the Market Committee from enforcing the provisions of the Act, is untenable. When once the mills of the petitioners are located within the notified areas i.e., at Peddapuram, for which the Market Committee is constituted with its head quarters at Kirlampudi, the provisions of the Act applies and the relief sought for by the petitioners cannot be granted.

9. The second contention that since no facilities are being provided in the market yard, the respondents cannot insist for payment of market fees and also cannot insist for obtaining licence is concerned, in the counter affidavit filed by the respondents it is specifically stated that the Government have acquired Acs. 13-00 of land and in the counter the facilities that are being provided are also categorically stated. But as per the case of the petitioners, the facilities are not being provided. Since this is a disputed question of fact, this court cannot give a finding. But the admitted facts are that the area in which the petitioners mills are located is notified as per the provisions of the Act and the A. P. Market Committee of Peddapuram is having its head office at Kirlampurdi, where market yard is located. It is also not in dispute that 'topiaca', which the petitioners are using as raw material for manufacture of starch is a notified commodity and is treated as a vegetable under the provisions of the Act.

Under similar circumstances, a Division Bench of this Court in ***GURRAM POLISETTI AND OTHERS v. GOVERNMENT OF A.P.*** taking into considerations judgments of the Apex Court, held as under:

> "13. In the instant writ petitions, the grievance of the petitioners is that no service is rendered by the respondents to the traders of ghee. No amenities are provided to the petitioners for conducting their trade in the market yard. As no amenities are provided by the respondents, it is contended that the petitioners need not pay any fees to the market committees. This question – whether the facilities are at all provided by the respondents or not is purely a question of fact. If no facilities are provided by the respondents for conducting of the business by the petitioners, it is open for the petitioners to complaint about the same to the authorities concerned and if such complaint is made, the authorities are bound to consider the same and pass appropriate orders thereon. But as long as the commodity is notified and continues in the statute book, one cannot escape from its liability, on the other hand he has to answer to the dictates of the statute.
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> 14. In our considered view inclusion of the item 'ghee' as a notified commodity is well within the purview of the statute. There is no arbitrariness or illegality as such in the decision of the State. If one has to conduct trade in 'ghee' he has to necessarily obtain a licence from the market committee under Section 7(1) of the Act and has to pay the required market fee to the market committee concerned."

10. At the cost of repetition it is to be noted that the Topiaca which is used in the manufacture of starch by the petitioners is a notified commodity and as per the provisions of the statue, the Government issued draft notification under sub-section (c) of Section 4 read with sub section (1) and (2) of Section 3 of the Act declaring their intention to separate the area comprising within the taluks of Ramachandrapuram, Pithapuram, Kakindada, Peddapuram and Prathipadu for the notified area of Agricultural Market committees. Further by virtue of the power conferred under Section 4(4) of the Act, market areas were declared. The provisions referred to above unambiguously stipulate that once the market area is notified, it is incumbent on the traders to pay the market fee and obtain the licence.

11. In view of the above facts and circumstances and the provisions of the Act and also in view of the law laid down by the Division Bench of this Court, the writ petition is devoid of any merits and the same is dismissed.

12. However, it is needless to mention that it is open for the petitioners to make a representation to the authorities concerned, if really the facilities stated by the

respondents in the counter are not provided in the market.

13. In the circumstances of the case, there shall be no order as to costs.

AVS ----------

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